

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE MUTUAL FUNDS INVESTMENT LITIGATION)	
)	MDL 1586
)	
)	
MATTHEW WIGGENHORN, individually and on behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No. 1:05-cv-01674-JFM
)	
v.)	Judge J. Frederick Motz
)	
)	
AXA EQUITABLE LIFE INSURANCE)	
COMPANY, f/k/a EQUITABLE LIFE)	
ASSURANCE SOCIETY OF THE UNITED)	
STATES,)	
)	
Defendant.)	
)	

**EQUITABLE’S MOTION TO DISMISS
PLAINTIFF’S FIRST AMENDED COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant AXA Equitable Life Insurance Company, formerly known as The Equitable Life Assurance Society of the United States (“Equitable”), hereby moves to dismiss Plaintiff’s First Amended Complaint (the “FAC”) with prejudice for failure to state a claim upon which relief can be granted. As explained in detail in the accompanying memorandum of law, the class claim asserted in the FAC is preempted by the Securities Litigation Uniform Standards Act of 1988, 15 U.S.C. §§ 77p & 78bb(f) (“SLUSA”). In addition, Plaintiff lacks standing to bring claims based on alleged dilution of the Separate Account in which his premiums are invested. Finally, Plaintiff’s state law negligence claim is preempted by the uniform federal standards for the valuation of shares in mutual funds.

Equitable respectfully requests that it be permitted to present oral argument on its motion.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, Equitable respectfully requests that the Court dismiss the FAC with prejudice. Equitable seeks oral argument on its motion.

Dated: July 8, 2005

Respectfully submitted,

AXA EQUITABLE LIFE INSURANCE
COMPANY, f/k/a THE EQUITABLE LIFE
ASSURANCE SOCIETY OF THE UNITED STATES

By: /s/ Maggie J. Schneider
One of its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2005, I electronically filed with the Court **Equitable's Motion to Dismiss the First Amended Complaint**, service to be made on the following by electronic filing:

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/s/ Maggie J. Schneider
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